

*E-filed on* 11-17-06

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE CYGNUS TELECOMMUNICATIONS  
TECHNOLOGY, LLC, PATENT  
LITIGATION

No. MDL-1423  
This Order Applies to All Actions

THIS ORDER RELATES TO:  
All Actions


C-02-00142 RMW  
C-02-00145 RMW  
C-02-05437 RMW  
C-03-03378 RMW  
C-03-03594 RMW  
C-03-03596 RMW  
C-03-04003 RMW  
C-04-03001 RMW  
C-04-03365 RMW  
C-04-04247 RMW  
C-04-04359 RMW  
C-06-03843 RMW  
C-06-04295 RMW  
C-06-06479 RMW

ORDER DENYING DEFENDANTS'  
MOTION TO DISMISS FOR LACK OF  
SUBJECT-MATTER JURISDICTION

Defendants assert that Cygnus does not own the patents-in-suit and move to dismiss these consolidated actions for lack of subject-matter jurisdiction. Although troubled by the inconsistencies in the evidence pertaining to the assignment of the patents to Cygnus, the court is satisfied that Cygnus has shown by a preponderance of the evidence that the assignment set forth in the September 1997 operating agreement is genuine. Cygnus's explanation that the representations

1 in Paragon's May 1998 petition to the Federal Circuit regarding the '984 application (case no. 98-  
2 547) and Wyatt's April 1998 declaration filed with the PTO in connection with the '115 application  
3 regarding Paragon's ownership of the applications occurred through inadvertence seems logical in  
4 light of the facts that Cygnus paid the issuance fees for the patents and represented to the PTO that  
5 an assignment had taken place, has acted as the owner of the patents since their issuance, and the  
6 September 1997 assignment was between entities both controlled by Wyatt. However, since  
7 Cygnus's counsel admittedly failed to record the assignment, failed to produce evidence of an  
8 assignment until October 2006, and filed two documents stating that Paragon was the owner of the  
9 patents after the date of the assignment, the court would consider a motion for reasonable fees and  
10 expenses incurred by defendants in pursuit of this motion. The motion to dismiss is denied.

11  
12  
13 DATED: 11/17/06

  
\_\_\_\_\_  
RONALD M. WHYTE  
United States District Judge

1 A copy of this order was mailed on \_\_\_\_\_ to:

2 **Counsel for Plaintiff:**

3 John P. Sutton  
2421 Pierce Street  
4 San Francisco, CA 94115-1131

Kieran Patrick Fallon  
436 SW 8th Street  
Miami, FL 33130-2814

5 **Counsel for Defendants:**

6 Alan M. Weisberg, Steven M. Greenberg  
Christopher & Weisberg, P.A.  
7 200 E. Las Olas Avenue  
Suite 2040  
8 Fort Lauderdale, FL 33301

Matthew Francis McGahren  
Baum & McGahren  
6171 Crooked Creek Road  
Norcross, GA 30092

9 John C. Carey  
Rodriguez Greenberg & Paul  
10 1395 Brickell Ave, Suite 700  
Miami, FL 33131

Lori D. Greendorfer, Maxim H. Waldbaum  
Schiff Hardin LLP  
623 Fifth Avenue  
28th Floor  
New York, NY 10022

11 Felice B. Galant, Gregory B. Wood  
12 Fulbright & Jaworski L.L.P.  
865 South Figueroa Street  
13 Twenty-Ninth Floor  
Los Angeles, CA 90017

Thomas T. Tamlyn  
Yeskoo Hogan & Tamlyn, LLP  
535 Fifth Avenue  
New York, NY 10017

14 Joseph P. Zammit  
15 Fulbright & Jaworski  
666 Fifth Avenue  
16 New York, NY 10103

Peter S. Canelias  
Law Offices of Peter S. Canelias  
420 Lexington Avenue  
Suite 2148  
New York, NY 10170

17 John F. Mardula, Jon L. Roberts  
Roberts Mardula & Wertheim, LLC  
18 11800 Sunrise Valley Drive  
Suite 1000  
19 Reston, VA 20191-5302

Elizabeth E. Green, R. Scott Shuker  
Gronek & Latham, LLP  
390 N. Orange Avenue  
Suite 600  
Orlando, FL 32801

20 Richard B. Sheldon  
Mitchell Silberberg & Knupp LLP  
21 11377 West Olympic Boulevard  
Los Angeles, CA 90064-1683

Gregory J. Nelson  
Nelson & Roediger  
3333 E Camelback Road, Suite 212  
Phoenix, AZ 85018

22 Jeffrey L. Silvestrini, Brian F. Roberts  
23 Cohne Rappaport & Segal  
P.O. Box 11008  
24 Salt Lake City, UT 84147-0008

Peter Neil Greenfeld  
Greenfeld Law Group  
3333 E Camelback Road, Suite 212  
Phoenix, AZ 85018-2324

25 Raymond J. Etcheverry  
Parsons, Behle & Latimer  
26 One Utah Center  
201 South Main Street,  
27 Suite 1800, Post Office Box 45898  
Salt Lake City, UT 84145

Matthew McGahren  
Baum, McGahren & Chiu, LLC  
6171 Crooked Creek Road  
Norcross, GA 30092

1 **Courtesy Copy:**

2 Clerk of the Panel  
3 Judicial Panel on Multidistrict Litigation  
4 Thurgood Marshall Federal Judiciary Building  
5 One Columbus Circle, N.E.  
6 Room G-255, North Lobby  
7 Washington, DC 20002-8004

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
Counsel is responsible for distributing copies of this order to co-counsel, as necessary.